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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JONATHAN D. SMITH,

11 Petitioner,

12 v.

13 DONALD HOLBROOK,

14 Respondent.

CASE NO. 3:17-cv-05664-RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR: NOVEMBER 24, 2017

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16 The District Court has referred this petition for a writ of habeas corpus to United States  
17 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §  
18 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the  
19 petition pursuant to 28 U.S.C. § 2254.

20 Petitioner asks this Court to hear his habeas petition even though he has not exhausted his  
21 state court remedies. However, he requests, if the Court will not hear his petition now, and if the  
22 Court will not grant him a stay, that the Court allow him to voluntarily dismiss the petition and  
23 refile at a later date. Therefore, the Court recommends the Honorable Robert J. Bryan dismiss the  
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1 petition without prejudice and allow petitioner to refile his habeas petition once he has exhausted  
2 his state court remedies.

### 3 BACKGROUND

4 Petitioner filed this petition for a writ of habeas corpus in August of 2017. Dkt. 1. Having  
5 reviewed his petition, this Court noted that petitioner had not exhausted his remedies in state  
6 court, and ordered petitioner to show cause why he had not exhausted his state remedies. Dkt. 6.  
7 Petitioner filed a response, stating that he chose not to file in state court because he believed the  
8 State would require him to withdraw his guilty plea and he would be forced into a lengthier term  
9 of confinement. Dkt. 7 at 1. He asks the Court to hear his petition, to stay his petition, or to allow  
10 him to voluntarily withdraw his petition so he may refile it after exhausting his state court  
11 remedies. Dkt. 7 at 1-2.

### 12 DISCUSSION

13 “[A] state prisoner must normally exhaust available state judicial remedies before a  
14 federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275  
15 (1971). A petitioner’s claims are only exhausted after “the state courts [have been given] a  
16 meaningful opportunity to consider allegations of legal error without interference from the  
17 federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). “State prisoners must give the  
18 state courts one full opportunity to resolve any constitutional issues by invoking one complete  
19 round of the state’s established appellate review.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845  
20 (1999). Finally, the Court may, but need not, grant a stay, as long as the granting of a stay is  
21 within the Court’s discretion. *See Rhines v. Weber*, 544 U.S. 269, 276 (2005).

22 Here, petitioner has not yet exhausted his state court remedies. The Court may not rule on  
23 a habeas petition when the state courts have not been given a meaningful opportunity to consider  
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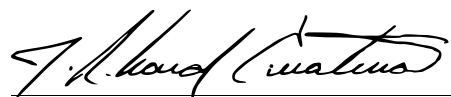
1 the underlying grounds for the petition. In addition, the Court has not yet ordered that  
2 petitioner's habeas petition be served on defendants. Therefore, in the interests of judicial  
3 economy, the Court declines to grant a stay and recommends that Judge Bryan grant petitioner's  
4 request to voluntarily withdraw his petition. The District Court should dismiss the petition  
5 without prejudice. Petitioner will then have the ability to refile when he has exhausted his state  
6 court remedies by providing each level of the state courts the ability to rule on his claims.  
7 Petitioner is reminded to pursue his state court remedies diligently in order not lose his right to  
8 file a federal claim, if that becomes necessary.

### 9 CONCLUSION

10 For the reasons above, the Court recommends that petitioner's habeas petition be  
11 dismissed without prejudice. Petitioner may then refile his habeas petition if he has made his  
12 claims at all levels of the state courts and if the state courts have denied him relief.

13 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
14 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
15 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*  
16 review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a result in a waiver  
17 of those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Miranda v.*  
18 *Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time limit  
19 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
20 **November 24, 2017**, as noted in the caption.

21 Dated this 30th day of October, 2017.

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24 J. Richard Creatura  
United States Magistrate Judge